



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
HANS J. BOTHKE)

Appearances:

For Appellant: Hans J. Bothke
 in pro. per.

For Respondent: Jon Jensen
John R. Akin
Counsel

O P I N I O N

This appeal is made pursuant to section 18593 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Hans J. Bothke against a proposed assessment of additional personal income tax and penalty in the total amount of **\$1,710.52** for the year 1978.

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Appellant's personal income tax return for 1978 revealed that he had received **\$27,900.56** in wages from **Fluor Engineers and Constructors**, additional cash in the amount of **\$1,275.16** from an unspecified **source**, and interest income of \$13.21. Appellant calculated his tax **liability as** zero by **treating** his wages and the unidentified cash as gross receipts from the trade or business of **"contracting"**, then subtracting numerous business **expenses**, and discounting the result to reflect his opinion of the fair market value of Federal Reserve notes and negotiable instruments (checks) he had received,.

Respondent audited appellant's return and requested substantiation of the claimed business expenses and of their relationship to a bona fide trade or **business** engaged in for profit. Based on the information appellant subsequently provided, respondent determined that the source of the **\$1,275.16** in cash **was** a vending or game machine owned by appellant. Although the **available** information did not provide a clear record of the income and expenses related to this machine, respondent concluded that the expenses were probably equal to the income from it, resulting in zero net income from this activity. Respondent further determined that some of appellant's claimed business expenses were properly deductible, **but** only as itemized deductions rather than as expenses of a trade or business distinct from appellant's performance of services as an employee of **Fluor Engineers and Constructors**. Finally, respondent rejected appellant's attempt to account for Federal **Reserve notes** at less **than** their face value.

Respondent issued a proposed assessment reflecting these determinations and imposing penalties for underpayment of tax, negligence, and underpayment of estimated tax. Appellant protested the assessment, a hearing was held, and respondent revised the assessment to allow additional itemized deductions. Respondent's notice of action on **appellant's** protest reflected the additional deductions and inadvertently deleted **all** of the penalties except **the** one for negligence.

After appellant filed this appeal, respondent again reviewed the information he submitted with his protest. This review led respondent to conclude that certain other itemized deductions should be **allowed**. Accordingly, respondent has conceded that the assessment should be reduced to **\$1,535.56** in tax and a negligence penalty in the amount of \$76.78.

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Respondent's determinations of additional tax and penalties are presumptively correct, and the taxpayer bears the burden of proving that they are wrong. (Appeal of K. L. Durham, Cal. St. Bd. of Equal., March 4, 1980.) **No error** has been shown in the revised assessment. Appellant's arguments are essentially the same as those that were considered and rejected by the Tax Court in Hans J. Bothke, ¶ 80,001, P-H Memo.-T.C. (1980), and by this board in the Appeal of Hans J. Bothke, decided May 21, 1980. Although those two cases involved an earlier year, the facts and the law have not changed. Accordingly, respondent's action in this matter will be modified to reflect respondent's concession regarding additional deductions, but in all other respects it will be sustained.

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good **cause** appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND **DECREED**, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Hans J. Bothke against a proposed assessment of additional personal income tax and penalty in the total amount of **\$1,710.52** for the year 1978, be and, the same is hereby modified in accordance with the Franchise Tax Board's concession. In all other respects, the action of the Franchise Tax Board is sustained.

Done at **Sacramento**, California, this **29th** day
of June, 1922, by the State Board of Equalization,
with Board **Members** Mr. Bennett, Mr. Dronenburg, and
Mr. Nevins present.

William M. Bennett, Chairman
Ernest- J. Dronenburg, Jr., Member
Richard Nevins, -Member
_____, Member
_____, Member